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No. 919

In the Supreme Court of the United States

OCTOBER TERM, 1958

ATLAS TRANSPORTATION COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (R. 20a-27a)* is reported at 165 F. Supp. 392. The opinion of the Court of Appeals (Pet. 28-33) is reported at 263 F. 2d 573.

JURISDICTION

The judgment of the Court of Appeals was entered on February 12, 1959. The petition for a writ of

* Record references are to the Appendix to the taxpayer's brief in the Court of Appeals. References to Supp. R. are to Appendix B to the Government's Court of Appeals brief.

certiorari was filed on May 13, 1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Whether the schedule of "taxable gross weights" contained in Treasury Regulations on Highway Motor Vehicle Use, Section 41.4482(b)-1, as promulgated and applied by the Commissioner of Internal Revenue, is a valid exercise of the authority expressly vested in the Commissioner by Section 4482(b) of the Internal Revenue Code of 1954.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of Sections 4481(a), (b), (c), (d) and (e) and 4482(a) and (b) of the Internal Revenue Code of 1954 and Section 41.4482 (b)-1 of Treasury Regulations on Highway Motor Vehicle Use are printed in the Appendix of the brief in opposition filed on behalf of the United States in *North American Van Lines, Inc.* v. *United States of America*, No. 838, this Term.

STATEMENT

During the fiscal year ending June 30, 1957, the taxpayer owned and operated five highway motor vehicles, each of which was a two-axle van equipped for use as a single unit with an actual unloaded weight of 13,000 pounds or more. These vehicles were used by the taxpayer in its business as a common carrier of household goods. (Pet. 31; R. 20a.)

Sections 4481 and 4482 of the Internal Revenue Code of 1954 impose a tax at the rate of $1.50 per

thousand pounds of "taxable gross weight" on the use of all highway motor vehicles with a taxable gross weight in excess of 26,000 pounds. As pertinent here, Section 4482(b) defines taxable gross weight as the sum of the unloaded weight of a motor vehicle plus the weight of the maximum load customarily carried on vehicles of the same type. This section also specifically grants authority to the Secretary of the Treasury to determine taxable gross weights by Regulations, including "formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise." Pursuant to this authority, Regulations were adopted setting forth a schedule of taxable gross weights. Section 41.4482 (b)-1 of Treasury Regulations on Highway Motor Vehicle Use. This schedule divides all highway motor vehicles into three primary classifications, namely, single units, combinations, and buses. Single units are further subdivided into three types lettered A through C, and, as required by Section 4482(b), a specified taxable gross weight is attributed to each type. Vehicles such as those operated by the taxpayer fall within type A of this schedule, with a taxable gross weight of 27,000 pounds.

Uncontroverted affidavits submitted to the District Court established that, while the actual loaded weights of the taxpayers' vehicles were substantially less than 26,000 pounds, (1) the classifications contained in the Treasury Regulations are recognized by both the commercial trucking industry and the Bureau of Public Roads, and (2) in the United States trucking industry as a whole vehicles of the type

operated by the taxpayer customarily have a maximum loaded weight of 27,000 pounds. (Pet. 31-32; R. 11a-14a; Supp. R. 1b-5b.)

The taxpayer computed and paid a highway use tax of $202.50 for the fiscal year ending June 30, 1957, on the basis of the classification of taxable gross weights prescribed in the Regulations, and subsequently brought this action for a refund because its loaded vehicles actually weighed less than 26,000 pounds. (Pet. 28.) Both the District Court (R. 20a-27a) and the Court of Appeals (Pet. 28-33) held that the tax was properly collected.

ARGUMENT

The question here is the same as in *North American Van Lines, Inc.* v. *United States*, No. 838, in which this Court denied certiorari on June 1, 1959. There is no more occasion for further review of this case than of that one. The decision below, affirming that of the District Court, is in accord with the decision of the Court of Claims in *North American* (169 F. Supp. 252), and concededly (Pet. 7) there is no conflict. The contentions which taxpayer advances here are substantially the same as those advanced in *North American*, and we respectfully refer the Court to the Government's brief in opposition in No. 838.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.

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JUNE, 1959.

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